



**COURT OF APPEALS OF INDIANA
ORAL ARGUMENT AT A GLANCE
INDIANA STATE UNIVERSITY
HULMAN MEMORIAL STUDENT UNION**

Brea Rice v. State of Indiana

Appeal from:
Morgan Superior Court,
The Honorable
Christopher Burnham, Judge

Oral Argument:
Monday, October 19, 2009
1:00 p.m.
20 minutes each side

CRIMINAL LAW ISSUE

Today we will discuss whether evidence seized in the course of executing an arrest warrant that is later determined to have been issued in the absence of probable cause must be suppressed.

CASE SYNOPSIS

Facts and Procedural History

On June 24, 2008, Mooresville Police Department officers Yarnell and Harris executed a search warrant at a home located on Harrison Street in Mooresville, Indiana. The search warrant had been issued for the purpose of searching for and seizing stolen property that was allegedly stored in the residence. Officers Yarnell and Harris did not find any of the stolen property for which they were looking at the residence, but they did observe a motorcycle helmet on a shelf in the garage. The officers left

without seizing any evidence.

Officer Yarnell later learned that the motorcycle helmet had been reported stolen from Hamilton County. Officer Yarnell contacted the owner of the Harrison Street home who informed him that Brea Rice and Brian Nysewander rented the house and anything in the house or garage belonged to them. Officer Yarnell filed an affidavit of probable cause requesting the issuance of arrest warrants for Rice and Nysewander on the charge of receiving stolen property. An information charging Rice with receiving stolen

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property was filed in Morgan Superior Court on July 2, 2008.

On July 9, 2008, Mooresville Police Department Officer Whitley drove by the Harrison Street house and saw Rice at the back door. Knowing of the outstanding arrest warrant, he pulled into the driveway and told Rice he had a warrant for her arrest. He transported her to the Mooresville Police Department for questioning. Upon arrival at the police department, Officer Whitley conducted a search incident to arrest and searched Rice's purse. He found two marijuana joints and a small amount of a substance that tested positive for methamphetamine.

Rice was charged with possession of methamphetamine and possession of marijuana; the charge of receiving stolen property was later dismissed. Rice filed a motion to suppress the drug evidence. The trial court found that the affidavit supporting the arrest warrant and information charging Rice with receiving stolen property was so lacking in probable cause that "official belief in its existence was entirely unreasonable" and the arrest warrant should not have been issued. However, based on the recent case of Herring v. United States, and the fact that Officer Whitley did nothing wrong in acting on knowledge of an active arrest warrant, the trial court found the "police conduct was [not] sufficiently deliberate that exclusion can meaningfully deter it," and therefore denied Rice's motion to suppress. Rice sought and was granted permission to pursue an interlocutory appeal of the trial court's decision.

Parties' Arguments

The Fourth Amendment to the United States Constitution states, "The right of the people to be secure in their persons, houses, papers, and effect, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The exclusionary rule is a judicially created remedy for a Fourth Amendment violation, "aimed at curbing overly zealous police action. It tells police that if they obtain evidence illegally, they will not ordinarily be allowed to use it against the suspect they are after." Rice argued in her motion to suppress that the arrest warrant was not supported by probable cause and therefore her arrest was unconstitutional and any evidence discovered as a result should be excluded from trial. The trial court agreed that the arrest warrant should not have been issued; however, relying on Herring – in which the Supreme Court held that the exclusionary rule does not apply when police act in objectively reasonable reliance on a subsequently invalidated warrant – it found that because the police conduct in arresting her pursuant to the warrant was not "deliberate, reckless or grossly negligent," excluding the evidence would not serve as a deterrent.

In Herring, police from one county arrested the defendant based upon information obtained via computer records of an active arrest warrant issued out of

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another county. After the arrest, police searched the defendant and found drugs and a handgun. When the issuing county pulled the actual warrant to send to the arresting county, it was discovered that the warrant had been recalled but the computer record had not been updated. The Supreme Court held that “when police mistakes are the result of negligence . . . , rather than systemic error or reckless disregard of constitutional requirements,” excluding evidence results in only marginal deterrence and is not required. Rice argues on appeal that Herring is distinguishable because her arrest was based on a warrant that never should have been issued and therefore reliance on it was unreasonable. She also argues that because the police officer executing the faulty affidavit and the police officer executing the warrant were members of the same police department, they should not be able to claim good faith in relying upon the warrant.

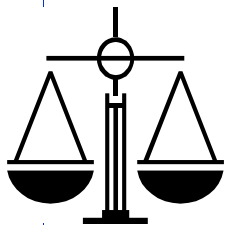
Rice also makes a state constitutional argument. Article 1, section 11 of the Indiana Constitution provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.” Despite similar language to the Fourth Amendment, our supreme court has articulated a different analysis for determining violations of the state constitution. Rice argues that even if Herring allows admission of

the evidence for Fourth Amendment purposes, the Indiana Constitution provides greater protection. Indiana Code section 35-37-4-5 codifies the exclusionary rule and provides that suppression of evidence is not warranted if the evidence was obtained in good faith. Because the trial court found that the affidavit supporting the arrest warrant was so lacking in indicia of probable cause as to render official belief in its existence unreasonable, Rice contends the evidence should be excluded under state law.

The State responds to Rice’s arguments by first noting that a federal or state constitutional violation does not automatically trigger the exclusionary rule. The State further responds that because a neutral and detached magistrate determined in the first instance that the affidavit demonstrated probable cause for the issuance of a warrant, the police officers were not in a position to second-guess that determination and it was objectively reasonable for them to rely on the warrant, especially given that there is no evidence the arresting officer ever saw or had access to the affidavit. The State contends, in line with Herring, that no deterrent effect would be served by excluding the evidence and that the trial court’s application of the good faith exception to the exclusionary rule should be affirmed.

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Glossary

Warrant: A document issued by a judge authorizing a police officer to search a particular area or person for evidence relating to a particular crime.

Probable cause: Although lacking a precise definition, the United States Supreme Court has described probable cause as the existence of facts and circumstances that would lead a man of reasonable prudence to believe that contraband or evidence of a crime will be found in a particular place.

Affidavit: A written statement of fact which is sworn to as the truth.

Information: A formal accusation of a crime made against a person by the prosecuting attorney.

Search incident to arrest: Another exception to the warrant requirement; when a person is lawfully arrested, officers may search the person and the area around the person for weapons or concealed

evidence without first procuring a warrant.

Suppress: If a person charged with a crime believes a police officer has unlawfully obtained evidence against him, the person may request the trial court disregard, or “suppress,” that evidence. If the trial court grants the request, the evidence may not be used in determining whether the person is guilty of the crime.

Interlocutory appeal: An appeal taken before the final judgment in a case.

TODAY'S PANEL OF JUDGES

Hon. John G. Baker (Monroe County) Chief Judge, Presiding

- Judge of the Court of Appeals since June 1989

John G. Baker is originally from Aurora in Dearborn County and lived in Monroe County for 35 years. Since June 1989, he has served as a Judge of the Indiana Court of Appeals representing the First District, and has authored more than 3,000 majority opinions. Prior to becoming an appellate court judge, he served as county court and superior court judge for 13½ years in Bloomington, disposing of more than 15,000 cases.

Judge Baker graduated from Culver Military Academy and received his A.B. degree from Indiana University in 1968 in History and his J.D. from the Indiana University School of Law—Bloomington in 1971. He received his LLM in Judicial Process from the University of Virginia in 1995. Before assuming the trial bench, he was a partner in the firm of Baker, Barnhart, and Andrews in Bloomington and was a Captain in the U.S. Army Reserves.

Since 1980, Judge Baker has taught as an adjunct professor at Indiana University's School of Public and Environmental Affairs, and since 2004 at the School of Law in Indianapolis. In addition, Judge

Baker has served on the faculties of the Indiana Judicial College, Indiana Continuing Legal Education Forum, and the National Institute of Trial Advocacy.

His professional associations include the American, Indiana State, Monroe County and Indianapolis Bar Associations. For the latter, he served as Vice-President in 1995. He has been a member of the Indiana Judges Association's Board of Managers continually since 1979 and served as its President from January of 1987 through June of 1989.

Judge Baker has been active in community and civic affairs as well. In addition to his church, YMCA, and other similar organizations, Judge Baker has been active in Boy Scouts of America since his youth and was awarded the rank of Eagle Scout.

Judge Baker, who was retained on the Court by election in 1992 and 2002, lives near Zionsville with his wife, Margaret (Peggy) Paul Baker. They have five children and, so far, six grandchildren.

TODAY'S PANEL OF JUDGES

Hon. Margret G. Robb (Tippecanoe County)

- Judge of the Court of Appeals since July 1998

Margret G. Robb was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis.

Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe

County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YWCA Salute to Women "Women of Distinction" Award.

Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue (M.A. and Ph.D., Indiana University). Their son, Douglas, a graduate of the U.S.N.A., recently returned from his second deployment.

TODAY'S PANEL OF JUDGES

Hon. L. Mark Bailey (Decatur County)

- Judge of the Court of Appeals since January 1998

L. Mark Bailey was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in January of 1998 and was retained by election in 2000. Born in Decatur County, Judge Bailey was raised on the family farm homesteaded by his ancestors over 150 years ago. He earned his B.A. from the University of Indianapolis; his J.D. from Indiana University School of Law at Indianapolis; and his M.B.A. from Indiana Wesleyan University.

Before his appointment, Judge Bailey was a trial court judge, an administrative law judge, and a practicing attorney. During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He chaired the Local Coordinating Council of the Governor's Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution Committee. Additionally, he served on the Board of Managers of the Indiana Judges Association and the Judicial Ethics Committee of the Indiana Judicial Center. He is also a certified civil mediator.

Judge Bailey was also the first Chairperson of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation's Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions. In 2004, Judge Bailey and his

First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings. In February of 2006, he served as the Distinguished Jurist in Residence at Stetson University College of Law, and in 2007-08, he was the Moderator of the Indianapolis Bar Association's Bar Leader Series. Currently, Judge Bailey is a member of the Supreme Court Committee on Rules of Practice and Procedure and the Judicial Education Committee of the Judicial Conference of Indiana; he again serves on the Board of Managers of the Indiana Judges Association, now as the Appellate District member.

A strong supporter of law-related education, Judge Bailey teaches government classes at the University of Indianapolis. He is also a frequent presenter at Indiana Continuing Legal Education seminars, and he regularly volunteers to judge law school trial advocacy and moot court competitions and to teach National Institute of Trial Advocacy programs. He and his wife have two children.

ATTORNEYS FOR THE PARTIES



For Appellant, Brea Rice:

Steven C. Litz
Attorney at Law
Monrovia, Indiana

Steven C. Litz graduated from the University of Virginia in 1981 with a B.A. with distinction in English and Philosophy. Steven graduated from Indiana University School of Law in 1984. He was an associate with Nile Stanton & Associates until the Indiana Supreme Court saw fit to take Mr. Stanton's license from him in 1986. Since then, Steven has been in private practice. He concentrates in criminal defense and has a reputable surrogate

mother program. Steven is a member of the Morgan County Bar Association, having served as its president from 2003-2005. Steven is also a member of the National Association of Criminal Defense Attorneys. He has been a public defender since 1993. Steven received the Heartland *Pro Bono* Award in 2008 for service to indigent clients.

For Appellee, State of Indiana:

Arturo Rodriguez
Attorney General's Office
Indianapolis, Indiana

Arturo Rodriguez was born in Corpus Christi, Texas. Arturo attended DePaul University in Chicago, Illinois where he graduated with a B.A. in Communications in 2002. He then attended Thomas M. Cooley Law School in Lansing, Michigan. Prior to graduating from law school, Arturo interned at Dykema Gossett PLLC. As an intern, he assisted in maintaining an Indiana Law website and writing Energy Law newsletters. Following law

school, Arturo moved to Indianapolis where he was admitted to the Indiana bar in 2007 and admitted to the Illinois bar in 2009. Arturo is currently employed by the Office of the Indiana Attorney General as a deputy in the Appellate Division. As a Deputy Attorney General, he represents the State of Indiana in non-capital cases on direct appeal. As to his hobbies, Arturo enjoys traveling and playing sports.